REMARKS

In response to a telephone call to Examiner Joshua Levine, it was ascertained that the Office Action was written on the basis of the claims as amended with Preliminary Amendment B filed electronically on January 18, 2008. For the Examiner's convenience, these claims are provided in their present form in this paper.

Neither independent claim 1 nor independent claim 9 would be anticipated by the subject matter of U.S. Patent No. 5,645,605 to Klawitter et al (hereinafter Klawitter). The Examiner is simply mistaken in his assertion that Klawitter provides a surgically implantable prosthesis in the form of a circular disk of precise characteristics. As best seen in Figures 2 and 3, Klawitter provides a pair of cooperating surgical implants which have complementary articulating, generally saddle-shaped surfaces. Review of the text of Klawitter patent will show that the artist's depiction of sections of two toruses are simply given for the purposes of explanation so as to allow the reader to better visualize the shape of each articulating surface of the two cooperating implants. There is no disk envisioned. Review and withdrawal of the rejection under section 102 are respectfully requested.

Neither claim 1 nor claim 9 would be anticipated by the disclosure of published U.S. Patent Application No. 2002/0035400 to Bryan et al (hereinafter Bryan et al). The implantable joint prosthesis disclosed by Bryan et al is designed for use as an interverbral disk prosthesis. It would not be suitable for replacement of a CMC joint or a TMT joint. The Bryan et al disk does not include an axially flaring hole which extends therethrough from surface to surface. The central passageway does not extend through the device; the device is solid in its center. As best seen in Figures 6 and 7, Bryan et al shows as multi-piece implant where top and bottom shells 20 and 40 sandwich a deformable and resilient central body, with the sandwich being surrounded by a flexible sheath. The solid central body is encapsulated within the sheath and the shells so it can move freely therein relative to the concave inner surfaces of the shells. The Bryan et al device would not permit passage of a flexible cord which would conform to the flaring surface of

the axial hole. Review of the rejection on the basis of Bryan et al and withdrawal of it are respectfully requested.

The dependent claims include additional recitations which are likewise absent from the disclosures of either Klawitter or Bryan et al, but are not detailed here inasmuch as it is clear that neither independent claim 1 nor independent claim 9 is anticipated by the disclosure of either reference.

The Examiner's secondary reference, U.S. Patent No 6,126,690 to Ateshian et al, is directed to a unique manufacturing process where imaging data is obtained from a healthy contralateral joint and is then utilized as a model for fabrication of a prosthesis having an articulating surface to match one of those surfaces. It has no relevance to Applicant's claimed invention, which is unconcerned with designing a singular implant via the use of imaging data taken from a singular patient.

Whereas U.S. Patent No. 6,159,247 to Klawitter et al does teach the use of sets of implants of different sizes to accommodate joints of different sizes, it is not otherwise relevant and is not pertinent to independent claims 1 and 9.

Claim 16 recites subject matter that would not be obvious from the disclosure of Klawitter. As set forth hereinbefore, Klawitter simply does not disclose an implantable circular disk having a pair of convex spherical surfaces and an axial flaring hole that extends therethrough from surface to surface to accommodate a flexible cord. Accordingly, the rejection of independent claim 18 should be reconsidered and withdrawn.

While the Examiner's secondary reference, U.S. Patent No. 4,198,712 to Swanson discloses an alternative embodiment in Figures 12 through 14 where a replacement scaphoid bone can be used in a patient requiring stabilization, it can be seen that this is not a teaching of passage of a flexible cord through two surfaces that articulate with each other; instead, as can

been seen from Figure 13, the tendon is passed through lateral surfaces. The arrangement is merely for lateral stabilization.

For the reasons expressed herein, it is submitted that independent claims 1, 9 and 16 are not fairly rejected as either anticipated by, or obvious from, the references applied by the Examiner against those claims, and the pending independent claims should be allowed along with the claims dependent thereupon. In the absence of more pertinent prior art, it is submitted that claims 1-20 be allowed, and allowance thereof is respectfully requested. It is believed that this application is presently in condition for allowance, and favorable action is courteously solicited.

Respectfully submitted,

Date: July 29, 2008

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